

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VONNIE M. CRAWFORD, )  
Plaintiff, ) CASE NO. C13-1786-JCC-MAT  
v. )  
CAROLYN W. COLVIN, Acting ) REPORT AND RECOMMENDATION  
Commissioner of Social Security, ) RE: SOCIAL SECURITY DISABILITY  
Defendant. ) APPEAL  
 )  
 )  
 )

Plaintiff Vonnie M. Crawford proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda, the Court recommends this matter be AFFIRMED.

## FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1957.<sup>1</sup> She completed the ninth grade of school,

1 Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of  
Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case

01 obtained a GED, and received vocational training and licenses in medical assistance and  
 02 manicuring. (AR 44.) Plaintiff previously worked as, among other things, a manicurist,  
 03 medical assistant, phlebotomist, nurse assistant, and home attendant. (AR 29, 69-70.)

04 Plaintiff filed her DIB application in February 2011, alleging disability since  
 05 December 31, 2008. (See AR 176-77, 255.) She later amended her onset date to January 1,  
 06 2010. (AR 41.) Her application was denied initially and on reconsideration, and she timely  
 07 requested a hearing.

08 ALJ Ilene Sloan held a hearing on May 21, 2012, taking testimony from plaintiff and a  
 09 vocational expert (VE). (AR 37-77.) On June 14, 2012, the ALJ rendered a decision finding  
 10 plaintiff not disabled. (AR 17-31.) Plaintiff timely appealed.

11 The Appeals Council denied plaintiff's request for review on August 16, 2013 (AR 1-7),  
 12 making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this  
 13 final decision of the Commissioner to this Court.

14 **JURISDICTION**

15 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

16 **DISCUSSION**

17 The Commissioner follows a five-step sequential evaluation process for determining  
 18 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
 19 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had  
 20 not engaged in substantial gainful activity since the amended alleged onset date, concluding  
 21 work she performed on a self-employed basis as a manicurist after that date fell below the

22 Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 presumptive threshold for substantial gainful activity. At step two, it must be determined  
02 whether a claimant suffers from a severe impairment. The ALJ found plaintiff's status post  
03 right carpal tunnel release, degenerative disc disease, generalized anxiety disorder, and  
04 depressive disorder not otherwise specified (NOS) severe. The ALJ found a number of other  
05 impairments not severe, including left hand carpal tunnel syndrome, left eye vitreous  
06 degeneration, asthma, marijuana use, hypothyroidism, fibromyalgia, and vertigo. She also  
07 found no medically determinable cognitive disorder or cardiac impairment associated with  
08 complaints of chest pain. Step three asks whether a claimant's impairments meet or equal a  
09 listed impairment. The ALJ found plaintiff's impairments did not meet or equal the criteria of  
10 a listed impairment.

11 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
12 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
13 demonstrated an inability to perform past relevant work. The ALJ found plaintiff had the RFC  
14 to perform light work, except that she can occasionally climb ramps and stairs; should never  
15 climb ladders, ropes, or scaffolds; can frequently balance and stoop; can occasionally kneel,  
16 crouch, and crawl; can perform frequent fingering and feeling with the dominant right hand;  
17 should avoid concentrated exposure to extreme cold, vibration, and hazards; and can  
18 understand, remember, and carry out simple, routine tasks. With this RFC, the ALJ found  
19 plaintiff able to perform past relevant work as an office helper, phlebotomist, and manicurist.

20 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
21 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
22 an adjustment to work that exists in significant levels in the national economy. The ALJ

01 alternatively concluded plaintiff could perform other jobs existing in significant levels in the  
02 national economy, such as work as a mail clerk, marker, or library page. The ALJ, therefore,  
03 concluded plaintiff was not disabled at any time from the amended alleged onset date through  
04 the date of the decision.

5 This Court's review of the final decision is limited to whether the decision is in  
6 accordance with the law and the findings supported by substantial evidence in the record as a  
7 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
8 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
9 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
10 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
11 supports the final decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
12 F.3d 947, 954 (9th Cir. 2002).

13 Plaintiff argues the ALJ erred at step two, in determining she could perform past  
14 relevant work, and in assessing her credibility and the opinions of her treating doctor. She  
15 requests remand for further proceedings or, if the Court finds the record fully developed, a  
16 remand for an award of benefits. The Commissioner maintains the ALJ's decision has the  
17 support of substantial evidence and should be affirmed.

## Step Two

19 Plaintiff argues the ALJ's step two findings lack the support of substantial evidence.  
20 She raises specific challenges to the ALJ's determination that her fibromyalgia, insomnia, left  
21 carpal tunnel syndrome, and a cognitive disorder are not severe.

22 At step two, a claimant must make a threshold showing that her medically determinable

01 impairments significantly limit her ability to perform basic work activities. *See Bowen v.*  
 02 *Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). “Basic work  
 03 activities” refers to “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§  
 04 404.1521(b), 416.921(b). “An impairment or combination of impairments can be found ‘not  
 05 severe’ only if the evidence establishes a slight abnormality that has ‘no more than a minimal  
 06 effect on an individual’s ability to work.’” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
 07 1996 (quoting Social Security Ruling (SSR) 85-28). “[T]he step two inquiry is a de minimis  
 08 screening device to dispose of groundless claims.” *Id.* (citing *Bowen*, 482 U.S. at 153-54).  
 09 An ALJ is also required to consider the “combined effect” of an individual’s impairments in  
 10 considering severity. *Id.* A diagnosis alone is not sufficient to establish a severe impairment.  
 11 Instead, a claimant must show that her medically determinable impairments are severe. 20  
 12 C.F.R. §§ 404.1520(c), 416.920(c).

13 A. Fibromyalgia

14 Dr. Anshul Pandhi conducted a consultative rheumatology evaluation of plaintiff on  
 15 March 12, 2012, found significant tenderness in twelve out of eighteen “tender points,” and  
 16 diagnosed fibromyalgia. (AR 775-77.) On May 18, 2012, Dr. Pandhi provided a written  
 17 statement that plaintiff “has a several year history of Fibromyalgia [t]hat is progressively  
 18 worsening.” (AR 796.)

19 The ALJ observed that Dr. Pandhi saw plaintiff on only one occasion, that the medical  
 20 records did not show fibromyalgia has existed for several years, and that plaintiff did not begin  
 21 complaining of overall body aches until February 13, 2012, when she mentioned her daughter  
 22 has fibromyalgia and she was familiar with the condition. (AR 22 (citing AR 744).) The ALJ

01 found the medical records did not establish fibromyalgia had existed or will exist for twelve  
02 continuous months, and concluded this condition did not amount to a severe impairment. (*Id.*)

03 Plaintiff points to a variety of medical records, including documents submitted to the  
04 Appeals Council, reflecting her complaints of symptoms consistent with fibromyalgia, such as  
05 fatigue, interrupted sleep, and pain. (*See* Dkt. 16 at 4.) She argues that, even assuming the  
06 record supports an inference her fibromyalgia was not present until early 2012, there is nothing  
07 in the record to suggest this impairment could not be expected to last for a continuous period of  
08 twelve months. Plaintiff also argues that, even if deemed a correct step two finding, the ALJ  
09 erred in failing to consider the limitations arising from this medically determinable impairment  
10 at steps four and five. She notes that the ALJ gave significant weight to the opinions of  
11 consultative and reviewing sources who were not aware of the fibromyalgia diagnosis. (*See*  
12 AR 27-28.) However, for the reasons set forth below, the Court finds no error established.

13 As the Commissioner observes, both the impairment and the inability to perform  
14 substantial gainful activity must meet the twelve-month durational requirement. *Barnhart v.*  
15 *Walton*, 535 U.S. 212, 217-20 (2002). *See* 42 U.S.C. § 423 (d)(1)(A) (disability means  
16 “inability to engage in any substantial gainful activity by reason of any medically determinable  
17 physical or mental impairment . . . which has lasted or can be expected to last for a continuous  
18 period of not less than 12 months”); 20 C.F.R. §§ 404.1505, 1509 (claimant must have a severe  
19 impairment preventing work; impairment must have lasted or be expected to last at least twelve  
20 months). In this case, while there is a diagnosis and supporting examination results as of  
21 March 2012, there is little evidence supporting the conclusion this impairment meets the  
22 twelve-month durational requirement. “Where the evidence is susceptible to more than one

01 rational interpretation, it is the ALJ's conclusion that must be upheld." *Morgan v.*  
 02 *Commissioner of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999) (citing *Andrews v. Shalala*, 53 F.3d  
 03 1035, 1041 (9th Cir. 1995)). Plaintiff's reliance on scattered reports of pain, fatigue, and/or  
 04 tenderness over a number of years presents an alternative interpretation of the evidence, but  
 05 does not demonstrate the ALJ's interpretation was not rational, or that it lacks the support of  
 06 substantial evidence. Also, plaintiff misplaces her focus on an absence of evidence supporting  
 07 the conclusion her fibromyalgia could not be expected to last for twelve months. Plaintiff  
 08 bears the burden of proving an impairment is disabling. *Miller v. Heckler*, 770 F.2d 845, 849  
 09 (9th Cir. 1985).

10         Nor does plaintiff demonstrate error at subsequent steps of the sequential evaluation.  
 11 As plaintiff observes, an ALJ must consider the limiting effects of all of a claimant's  
 12 impairments, including those that are not severe, in determining RFC. 20 C.F.R. §  
 13 404.1545(e); SSR 96-8p. The failure to list an impairment as severe at step two is harmless  
 14 where limitations are considered at step four. *Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir.  
 15 2007). In this case, the ALJ noted her obligation to consider all impairments, including those  
 16 not severe, clarified that she considered all symptoms and evidence, thoroughly addressed the  
 17 evidence of record, and assessed a variety of limitations. (AR 18, 23-29.) Plaintiff fails to  
 18 identify medical evidence supporting a greater degree of limitation, based on her medically  
 19 determinable fibromyalgia, than that assessed by the ALJ.

20 B. Insomnia

21         The ALJ noted plaintiff's testimony she sleeps only four hours per night, but did not  
 22 find insomnia a severe impairment. (AR 21, 63.) She stated that, while treatment records

01 show insomnia, they did not indicate plaintiff sleeps four hours a night and shows her report  
 02 that Ambien works well for her. (AR 21 (citing AR 419, 426).) Plaintiff points to an April  
 03 2011 record as reflecting her report of only four hours of sleep per night. (See AR 401.) She  
 04 maintains she continued to report difficulty with sleep even with Ambien, noting Dr. Pandhi's  
 05 consideration of this symptom. (AR 775-77.) She also points to evidence submitted to the  
 06 Appeals Council as showing this impairment existed for a number of years. (AR 803-04, 834.)

07 The ALJ here reasonably relied on the minimal amount of evidence associated with  
 08 insomnia and the evidence it was successfully treated in concluding plaintiff failed to  
 09 demonstrate this impairment significantly limited her ability to perform basic work activities.  
 10 Nor does plaintiff identify evidence supporting a greater degree of limitation than that assessed  
 11 by the ALJ. The Court, as such, finds no error established.

12 C. Left Carpal Tunnel Syndrome

13 The ALJ noted plaintiff's testimony of carpal tunnel syndrome (CTS) in her left hand,  
 14 but no intention to have surgery. (AR 20, 59.) She did not find this impairment severe,  
 15 stating: "She has normal strength, sensation and dexterity in the left hand and I do not see that  
 16 surgery was recommended." (AR 20.)

17 Plaintiff notes her testimony she did not seek surgery on her left hand given the poor  
 18 results on her right hand, and that, while she does not experience numbness on the left, it is  
 19 painful. (AR 59-61.) She also testified her rheumatologist was not surprised her left hand did  
 20 not "heal properly" given her fibromyalgia. (AR 47-48.) Finally, plaintiff points to various  
 21 medical records as supporting the existence of severe left CTS. (See Dkt. 16 at 8.)

22 The medical records provide little support for the contention that plaintiff's left CTS

01 constituted a severe impairment. Plaintiff was found to have full grip strength on the left in  
 02 September 2011 (AR 687), nerve conduction studies in October 2011 showed only “mild” CTS,  
 03 with the “right slightly worse than [the] left” (AR 668-69), and, in February 2012, even  
 04 plaintiff’s right wrist pain was noted as “improved[]” following surgery (AR 744). To the  
 05 extent plaintiff relies on her own testimony, the ALJ provided clear and convincing reasons for  
 06 finding plaintiff’s testimony less than fully credible, as discussed below. Moreover, as the  
 07 Commissioner observes, plaintiff fails to point to any medical evidence showing her mild left  
 08 CTS would prevent her from performing any of the jobs identified at step five, all of which  
 09 require no more than frequent fingering, feeling, and handling with either hand. *See*  
 10 Dictionary of Occupational Titles (DOT) 209.687-026, 209.587-034, 249.687-014. Plaintiff,  
 11 as such, fails to demonstrate the ALJ erred in relation to her left CTS.

12 D. Cognitive Disorder

13 Examining psychologist Dr. Faulder Colby diagnosed cognitive disorder NOS,  
 14 provisional, explaining: “With several possible causes, including a current migraine  
 15 headache, I gave only a provisional diagnosis of Cognitive Disorder NOS and recommend that  
 16 further memory assessment be done; if that occurs, further data reliability assessment should  
 17 also be ordered.” (AR 532-33.) He further stated: “[M]emory, but not necessarily  
 18 understanding, appeared to be at least moderately impaired; since the effects of her having an  
 19 ongoing migraine headache cannot be discounted, she may or may not actually have cognitive  
 20 deficits. Further assessment is recommended.” (AR 534.)

21 The ALJ noted Dr. Colby found plaintiff “might or might not actually have cognitive  
 22 deficits[,]” and that the State agency psychological consultants did not conclude plaintiff had a

01 cognitive disorder. (AR 20 (citing AR 533-34, 79-93, 95-110).) She found cognitive  
 02 disorder NOS was not a medically determinable impairment. (*Id.*)

03 An ALJ has an independent duty to fully and fairly develop the record. *Tonapetyan v.*  
 04 *Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). “Ambiguous evidence, or the ALJ’s own finding  
 05 that the record is inadequate to allow for proper evaluation of the evidence, triggers the ALJ’s  
 06 duty to ‘conduct an appropriate inquiry.’” *Id.* Plaintiff argues the cognitive disorder  
 07 evidence from Dr. Colby posed an ambiguity requiring further development of the record. The  
 08 Commissioner argues the ALJ did not find the evidence ambiguous or inadequate, and, instead,  
 09 looked to the evidence that plaintiff’s migraine headache influenced the tests results and the  
 10 absence of any evidence in the medical records as to a cognitive deficiency.

11 The record in this case contained, at most, a provisional diagnosis. This diagnosis,  
 12 standing alone, does not suffice to support the existence of a severe impairment. *See Ukolov v.*  
 13 *Barnhart*, 420 F.3d 1002, 1005-06 (9th Cir. 2005) (noting SSR 96-6p “provides that a medical  
 14 opinion offered in support of an impairment must include ‘symptoms [and a] diagnosis.’”)  
 15 (emphasis in original); *Carrasco v. Astrue*, No. ED CV 10-0043 JCG, 2011 U.S. Dist. LEXIS  
 16 12637 at\*12-13 (C.D. Cal. Feb. 8, 2011) (“A ‘rule-out’ diagnosis is by no means a diagnosis. In  
 17 the medical context, a ‘rule-out’ diagnosis means there is evidence that the criteria for a  
 18 diagnosis may be met, but more information is needed in order to rule it out.”)

19 Nor does the Court find error in the development of the record. The ALJ relied on the  
 20 opinions of two State agency non-examining physicians, both of whom considered the  
 21 provisional diagnosis by Dr. Colby, but concluded the record did not support the existence of a  
 22 medically determinable cognitive disorder impairment. (See AR 90-91, 102.) In light of that

01 evidence, the ALJ did not find the record either ambiguous or inadequate. Plaintiff fails to  
02 demonstrate the ALJ's determination, and reliance on the evidence from the reviewing  
03 physicians, was unreasonable. For this reason, and for the reasons stated above, plaintiff fails  
04 to demonstrate any error at step two.

05 Credibility

06 Absent evidence of malingering, an ALJ must provide clear and convincing reasons to  
07 reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007).  
08 "General findings are insufficient; rather, the ALJ must identify what testimony is not credible  
09 and what evidence undermines the claimant's complaints." *Lester v. Chater*, 81 F.3d 821, 834  
10 (9th Cir. 1996). "In weighing a claimant's credibility, the ALJ may consider his reputation for  
11 truthfulness, inconsistencies either in his testimony or between his testimony and his conduct,  
12 his daily activities, his work record, and testimony from physicians and third parties concerning  
13 the nature, severity, and effect of the symptoms of which he complains." *Light v. Social Sec.*  
14 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

15 The ALJ in this case found that, while plaintiff's medically determinable impairments  
16 could reasonably be expected to cause some of the symptoms alleged, plaintiff's statements  
17 concerning the intensity, persistence, and limiting effects of the symptoms were not entirely  
18 credible. Contrary to plaintiff's contention, the ALJ supported her credibility determination  
19 with clear and convincing reasons.

20 A. Activities

21 The ALJ noted plaintiff worked as a manicurist/pedicurist part-time through November  
22 2011, which required she "cart her equipment to the client's residence, fill a soaking tub with

01 water, use a Dremel tool, and file and clip the client's toenails and fingernails." (AR 26.) She  
 02 "performed much of this work bent over." (*Id.*) The ALJ found these activities to " belie the  
 03 degree of back pain alleged and indicate [plaintiff] had the ability to concentrate, see, and use  
 04 her hands." (*Id.*) The ALJ also found "she reads a lot, gardens, uses her computer for e-mail,  
 05 and does the banking and bill paying for her household online, which shows her concentration  
 06 and memory are less problematic than she has alleged. (*Id.*) She pointed to plaintiff's report  
 07 "she walks approximately 1/2 mile to her son's house on occasion[,] and "used to ride bicycles  
 08 with her husband 'all the time' until the beginning of last year, which was a year after the  
 09 amended alleged disability onset date." (*Id.*) The ALJ, accordingly, properly considered  
 10 evidence of plaintiff's activities as contradicting her testimony as to the degree of her  
 11 impairment, including evidence of work activity and significant physical activity within the  
 12 period of time in which plaintiff alleged disability. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
 13 2007). *See also Smolen*, 80 F.3d at 1284 (work history properly considered).

14 B. Objective Evidence

15 "While subjective pain testimony cannot be rejected on the sole ground that it is not  
 16 fully corroborated by objective medical evidence, the medical evidence is still a relevant factor  
 17 in determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
 18 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); SSR 96-7p. Also, "[c]ontradiction with the  
 19 medical record is a sufficient basis for rejecting the claimant's subjective testimony."  
 20 *Carmickle v. Comm'r of SSA*, 533 F.3d 1155, 1161 (9th Cir. 2008). The ALJ here properly  
 21 considered mild, mild-to-moderate, and normal imaging results, as well as numerous normal  
 22 and other findings on examination as bearing on the credibility of plaintiff's testimony as to the

01 degree of her limitations. (AR 26.) Plaintiff's reliance on her diagnosis of fibromyalgia does  
 02 not undercut the substantial evidence support for the ALJ's consideration of the objective  
 03 evidence given the absence of any error established in relation to that impairment.

04 C. Inconsistency

05 The ALJ pointed to inconsistency between plaintiff's testimony that her right hand  
 06 worsened following CTS surgery (*see* AR 59) and the treatment records, which showed  
 07 improvement following and benefit from the surgery. (AR 26 (citing AR 695-96, 744, and  
 08 710).) This consideration of inconsistency between plaintiff's testimony and the evidence was  
 09 entirely appropriate. *See Tonapetyan*, 242 F.3d at 1148. Indeed, “[o]ne strong indication of  
 10 the credibility of an individual's statements is their consistency, both internally and with other  
 11 information in the case record.” SSR 96-7p. Again, plaintiff's reliance on the fibromyalgia  
 12 diagnosis (*see* Dkt. 16 at 19) does not demonstrate error.

13 D. Mental Health Treatment and Complaints

14 The ALJ noted “very little mention of depression or anxiety in the treatment records[,]”  
 15 and the absence of any psychiatric hospitalization, mental health counseling, or psychotropic  
 16 medication, other than medication for sleep. (AR 26.) She noted that, while plaintiff claimed  
 17 panic attacks at the consultative psychological evaluation, she did not mention this to her  
 18 regular doctor, stating: “The claimant has a multitude of complaints and I find it unlikely that  
 19 she would neglect to mention panic attacks to her doctor.” (AR 26-27 (citing AR 528 (plaintiff  
 20 reported she “does not tell” her doctor about her panic attacks “because no one has ever found a  
 21 cause.”))) The ALJ also noted that, on March 12, 2012, plaintiff “reported having noticed  
 22 some depressed mood lately, which suggests it was a recent development[,]” and that another

01 examination on the same day “showed normal mentation, memory, attention span and  
 02 concentration.” (AR 27 (citing AR 776-77, 789).) She added: “Again, the claimant pays the  
 03 bills and does the banking for her household, which indicates her memory is less problematic  
 04 than alleged.” (AR 27.)

05 An ALJ properly considers an unexplained or inadequately explained failure to seek  
 06 treatment or follow a prescribed course of treatment. *Tommasetti v. Astrue*, 533 F.3d 1035,  
 07 1039 (9th Cir. 2008). An ALJ also properly considers a plaintiff’s failure to report allegedly  
 08 debilitating symptoms to her treatment providers. *Greger v. Barnhart*, 464 F.3d 968, 972-73  
 09 (9th Cir. 2006). In this case, the ALJ reasonably considered the absence of mental health  
 10 treatment or reports of associated symptoms as bearing on the credibility of her testimony as to  
 11 the degree of her impairment. For this reason, and for the reasons stated above, plaintiff fails  
 12 to demonstrate the ALJ’s credibility assessment lacks the support of substantial evidence.

13 Treating Physician’s Opinions

14 In general, more weight should be given to the opinion of a treating physician than to a  
 15 non-treating physician, and more weight to the opinion of an examining physician than to a  
 16 non-examining physician. *Lester*, 81 F.3d at 830. Contradicted medical opinions may not be  
 17 rejected without “specific and legitimate reasons” supported by substantial evidence in the  
 18 record for so doing.” *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.  
 19 1983)).

20 Plaintiff argues error in the ALJ’s consideration of the opinions of treating physician Dr.  
 21 Thomas Byrne. She notes the ALJ’s failure to address the weight assigned the opinions of Dr.  
 22 Byrne, and the absence of specific and legitimate reasons for rejecting this evidence.

01        “As a reviewing court, we are not deprived of our faculties for drawing specific and  
02 legitimate inferences from the ALJ’s opinion.” *Magallanes*, 881 F.2d at 755. Here, although  
03 the ALJ did not specify the degree of weight assigned the opinions of Dr. Byrne, it is apparent  
04 she rejected his opinions. Moreover, contrary to plaintiff’s contention, the ALJ provided  
05 specific and legitimate reasons supported by substantial evidence for rejecting this evidence.

06        The ALJ addressed the various RFC questionnaires completed by Dr. Byrne. At the  
07 time Dr. Byrne assessed plaintiff as capable of using her right hand and arm for only ten percent  
08 of the work day, in February 2011, plaintiff “was still working as a manicurist/pedicurist . . .  
09 which entailed using her right dominant hand for longer periods than Dr. Byrne opined she was  
10 capable of tolerating.” (AR 28 (citing AR 517).) While Dr. Byrne reported lower extremity  
11 weakness in an August 2011 questionnaire, the corresponding progress note showed normal  
12 strength in the lower extremities. (*Id.* (citing AR 322, 547).) Similarly, while Dr. Byrne  
13 found plaintiff limited in her left upper extremity in November 2011, the corresponding  
14 progress note did not describe any abnormal findings associated with plaintiff’s left hand or  
15 arm, described plaintiff as appearing well and in no apparent distress, and included an entirely  
16 normal physical examination aside from some tenderness over the right SI joint. (*Id.* (citing  
17 AR 579, 658).) Also, at the time of the January 2012 questionnaire and its hand-related  
18 limitations, plaintiff was in recovery for her CTS surgery. (*Id.* (citing AR 692-93).) The ALJ  
19 additionally noted plaintiff’s testimony at hearing that she could lift her twelve-pound cat. (*Id.*  
20 and AR 58.) She reasoned that the objective evidence did not support a finding plaintiff had  
21 any significant restriction with her left hand. (*Id.*) The ALJ further described March 2012  
22 medical records as showing plaintiff was doing well since her CTS surgery, had normal gait,

01 coordination, and sensation, and full strength in all muscle groups tested in all four extremities,  
 02 and that the most recent spine imaging showed only mild disk space narrowing, with  
 03 mild-to-moderate degenerative changes, and otherwise normal osseous structures and disk  
 04 spaces. (*Id.* (citing AR 710, 789, and 518).)

05 The ALJ stated that, although a treating physician, Dr. Byrne “did not provide a  
 06 significant rationale or cite any objective signs or findings in support of the limitations he  
 07 opined” in the questionnaires. (*Id.*) She reasoned: “The treatment records do not support  
 08 the limitations he opined and it appears the limitations were largely based on the claimant’s less  
 09 than fully credible subjective complaints.” (*Id.*)

10 “The ALJ need not accept the opinion of any physician, including a treating physician,  
 11 if that opinion is brief, conclusory, and inadequately supported by clinical findings.” *Thomas*,  
 12 278 F.3d at 957. An ALJ may also properly reject an opinion based on inconsistency with the  
 13 record, *Tommasetti*, 533 F.3d at 1041, and due to discrepancy or contradiction between the  
 14 opinion and the physician’s own notes or observations, *Bayliss v. Barnhart*, 427 F.3d 1211,  
 15 1216 (9th Cir. 2005). Finally, “[a]n ALJ may reject a treating physician’s opinion if it is based  
 16 ‘to a large extent’ on a claimant’s self-reports that have been properly discounted as  
 17 incredible.” *Tommasetti*, 533 F.3d at 1041 (finding physician’s records largely reflect  
 18 claimant’s reports of pain “with little independent analysis or diagnosis.”) (quoting *Morgan*,  
 19 169 F.3d at 602).

20 Here, the ALJ noted numerous inconsistencies between opinions offered by Dr. Byrne  
 21 and his own and other findings in the record, accurately described the conclusory nature of the  
 22 opinions and the absence of supporting objective findings, and reasonably construed the

01 opinions of Dr. Byrne as relying in significant part on plaintiff's discredited self-reports.  
 02 While plaintiff points to various objective findings and evidence in the record, she fails to  
 03 demonstrate the ALJ's reliance on other evidence and interpretation of the evidence overall was  
 04 not rational. *See Morgan*, 169 F.3d at 599. Nor does plaintiff acknowledge or demonstrate  
 05 error in the ALJ's reliance on contradictory opinion evidence from examining and  
 06 nonexamining physicians. (AR 27-29.) *See Thomas*, 278 F.3d at 956-57 ("When there is  
 07 conflicting medical evidence, the Secretary must determine credibility and resolve the  
 08 conflict.") (citing *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)). Plaintiff, in sum,  
 09 fails to demonstrate error in the ALJ's consideration of the medical opinion evidence.

10 Steps Four and Five

11 Plaintiff argues the ALJ's step four finding that she can perform her past relevant work  
 12 is erroneous, and asks that, if this is the only error found, the ALJ's decision be reversed and  
 13 affirmed in other aspects. She maintains this finding should not be given any preclusive affect  
 14 in "further proceedings between Ms. Crawford and the Commision[er]." (Dkt. 16 at 10.) The  
 15 Court, however, finds no basis for reversal.

16 As the Commissioner observes, plaintiff raises no challenge to the ALJ's alternative  
 17 step five finding. Nor is there any basis for concluding the ALJ erred at that step. (See AR  
 18 30-31.) As a general principle, an ALJ's error may be deemed harmless where it is  
 19 "'inconsequential to the ultimate nondisability determination.'" *Molina v. Astrue*, 674 F.3d  
 20 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to "the record as a whole  
 21 to determine whether the error alters the outcome of the case." *Id.* Here, even if the Court  
 22 were to find error at step four, such error would be harmless in light of the substantial evidence

01 support for the ALJ's alternative step five conclusion. There is, as such, no basis for  
02 remanding this matter for further proceedings. *Id.* at 1111 ("[W]e may not reverse an ALJ's  
03 decision on account of an error that is harmless.") *See also Carmickle*, 533 F.3d at 1162-63  
04 (the relevant inquiry "is not whether the ALJ would have made a different decision absent any  
05 error, . . . [but] whether the ALJ's decision remains legally valid, despite such error.")

06 **CONCLUSION**

07 For the reasons set forth above, this matter should be AFFIRMED.

08 DATED this 7th day of May, 2014.

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11 Mary Alice Theiler  
Chief United States Magistrate Judge

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